

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MICHAEL DOW,

Plaintiff,

Index No.

-against-

VERIFIED COMPLAINT

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, POLICE OFFICER
JACOB SUAREZ – Badge No. 24230 and POLICE
OFFICER DAMIEON FREY-Badge No. 9509,

Defendants.
-----X

Plaintiff Michael Dow, by his attorneys Joseph T. Mullen, Jr. & Associates, as for his
Verified Complaint, alleges the following upon information and belief:

The Facts

1. On and prior to November 8, 2012, Plaintiff resided in the County of New York,
City and State of New York.
2. On and prior to November 8, 2012, defendant THE CITY OF NEW YORK
("CITY") was and still is a municipal corporation organized and existing under, pursuant to, and by
virtue of the laws of the State of New York.
3. On and prior to November 8, 2012, defendant NEW YORK CITY POLICE
DEPARTMENT ("NYPD") was and still is an agency/department of THE CITY and subject to its
direction and control.
4. On and prior to November 8, 2012, Defendant Police Officer JACOB SUAREZ –
Badge No. 24230 ("Suarez") was a duly appointed and acting officer of NYPD.
5. On and prior to November 8, 2012, Defendant Police Officer DAMIEON FREY-
Badge No. 9509 ("Frey") was a duly appointed and acting officer of NYPD.

6. On December 28, 2012, and within 90 days after the claim herein arose, the plaintiffs caused a Notice of Claim in writing, sworn to and verified, to be served upon the CITY and NYPD.

7. At least 30 days have elapsed prior to the commencement of this action since the claim was presented to defendant CITY for adjustment as aforesaid, and the CITY has refused adjustment or payment.

8. This action is timely commenced pursuant to General Municipal Law subsection 50-i(1).

9. A statutory hearing, pursuant to Section 50-h of the General Municipal Law, was conducted by the CITY on November 26, 2013.

10. Plaintiff has in all respects complied with all statutory requirements for the commencement and prosecution of this action.

11. On and prior to November 8, 2012, as a member of NYPD, defendant SUAREZ was an agent, employee and servant of the CITY and was acting within the scope of his employment and authority as a New York City Police Officer.

12. On and prior to November 8, 2012, as a member of NYPD, defendant FREY was an agent, employee and servant of the CITY and was acting within the scope of his employment and authority as a New York City Police Officer.

13. On and prior to November 8, 2012, defendant Suarez was acting under color of law, to wit: under color of the statutes, ordinances, regulations, policies, customs and practices of the CITY and NYPD.

14. On and prior to November 8, 2012, defendant FREY was acting under color of law, to wit: under color of the statutes, ordinances, regulations, policies, customs and practices of the CITY AND NYPD.

15. On November 8, 2012, at approximately 9:00 AM, Plaintiff was lawfully within the NYC Subway Station for the No. 1 line, located at 103rd Street and Broadway, City, County and State of New York.

16. On November 8, 2012, at approximately 9:00 AM., while Plaintiff was lawfully within the NYC Subway Station for the No. 1 line, located at 103rd Street and Broadway, defendant SUAREZ did assault, batter, demean, manhandle, strike, handcuff, taunt, verbally abuse, use excessive force against, intentionally inflict emotional distress and/or negligently inflict emotional distress upon the Plaintiff, without any cause or provocation on the part of the Plaintiff contributing thereto.

17. On November 8, 2012, at approximately 9:00 AM., while Plaintiff was lawfully within the NYC Subway Station for the No. 1 line, located at 103rd Street and Broadway, defendant SUAREZ, FREY and other Police Officers thereafter falsely arrested Plaintiff and caused him to be prosecuted in the Criminal Court of the State of New York, Count of New York under Docket No. 2012 NY 085094, based upon a false and erroneous police report which was created and generated in order to cover up the aforesaid false arrest and assault and battering.

18. On and subsequent to November 8, 2012, Plaintiff was falsely imprisoned and spent approximately three (3) days in jail as a result of the false arrest.

19. The prosecution of the criminal case against Plaintiff was malicious and in bad faith.

**AS AND FOR A FIRST CAUSE OF ACTION
FOR ASSAULT AND BATTERY**

20. Plaintiff repeats and realleges Paragraphs "1" through "19" as if fully set forth.

21. By repeatedly and severely beating and kicking Plaintiff around the head, eyes, neck and face, Defendant SUAREZ, assaulted and battered Plaintiff causing him to sustain serious and permanent personal injuries.

22. The assault and battery were without probable cause or justification.

23. Defendant SUAREZ was acting within the scope of his employment, and under color of law at the time of the assault and battery upon Plaintiff.

24. Defendant SUAREZ was reckless, negligent and careless in that he did not stop or refrain from using excessive physical force upon the Plaintiff.

25. In addition to the serious permanent personal injuries, Plaintiff sustained humiliation, shame, indignity, and emotional and physical distress and injury all to his damage in an amount that exceeds the jurisdictional limitations of all lower Courts.

**AS AND FOR A SECOND CAUSE OF ACTION
FOR FALSE ARREST**

26. Plaintiff repeats and realleges Paragraphs "1" through "25" as if fully set forth.

27. On November 8, 2012, Plaintiff was placed under arrest by Defendant SUAREZ without probable cause.

28. On November 8, 2012, Plaintiff was placed under arrest by Defendant FREY.

29. The arrest and confinement of Plaintiff were without probable cause and not based upon or pursuant to a warrant.

30. The arrest and confinement of Plaintiff were effectuated by Defendant SUAREZ who was acting within the scope of his employment and under color of law.

31. The arrest and confinement of Plaintiff were effectuated by Defendant FREY who was acting within the scope of his employment and under color of law.

32. As a result of the false arrest and confinement, Plaintiff sustained serious and

permanent personal injuries along with humiliation, shame, indignity, damage to reputation and credit and suffered emotional and physical distress and injury, all to his damage in an amount which exceeds the jurisdictional limitations of all lower Courts.

**AS AND FOR A THIRD CAUSE OF ACTION
FALSE IMPRISONMENT**

33. Plaintiff repeats and realleges Paragraphs "1" through "32" as if fully set forth.

34. On November 8, 2012, Defendant SUAREZ, acting within the scope of his employment, under color of law and without justification and without probable cause imprisoned Plaintiff by detaining Plaintiff without cause and against his will and, thereby depriving him of his freedom and civil rights.

35. On November 8, 2012, Defendant FREY, acting within the scope of his employment, under color of law and without justification and without probable cause imprisoned Plaintiff by detaining Plaintiff without cause and against his will and thereby depriving him of is freedom and civil rights.

36. Defendants CITY and NYPD confined Plaintiff against his will and said confinement was not privileged.

37 As a result of the aforesaid false imprisonment, Plaintiff sustained serious and permanent personal injuries, along with humiliation, shame, indignity and emotional and physical distress, all to his damage in an amount that exceeds the jurisdictional limitations of all lower Courts.

**AS AND FOR A FOURTH CAUSE OF ACTION
FOR VIOLATION OF 42 U.S.C. §1983**

38. Plaintiff repeats and realleges Paragraphs "1" through "37" as if fully set forth.

39. Defendant SUAREZ, as a Police Officer acting under color of law and within the

scope of his authority, assaulted and battered Plaintiff in violation of 42 U.S.C. § 1983.

40. The intentional beating and verbal abuse of Plaintiff by Defendant SUAREZ when Plaintiff was unarmed, handcuffed and did not pose a threat of grievous bodily injury to Defendant or others, was done with actual malice toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the Constitutional and statutory civil rights of the Plaintiff.

41. Defendant SUAREZ exercised and utilized unreasonable and excessive force in arresting Plaintiff by assaulting him, punching him, kicking him, and beating him with handcuffs, and thereby deprived Plaintiff of his civil rights.

42. The false arrest and confinement of Plaintiff by the Defendant SUAREZ and FREY, the detention of Plaintiff without cause and against his will, deprived him of his civil rights, and the assault and verbal abuse of Plaintiff deprived Plaintiff of his civil rights in violation of 42 U.S.C. §1983.

43. The deprivation of Plaintiff's civil rights was a result of the aforementioned defendant officers acting under color of law and within their authority as a law enforcement officer within the employ of the CITY and NYPD.

44. The Defendant's actions were not privileged or immune when Plaintiff was assaulted, battered, had unreasonable and excessive force used against him, falsely arrested, falsely imprisoned and confined.

45. As a result of the violation of Plaintiff's civil rights, he has been damaged in a sum that exceeds the jurisdictional limitations of all lower Courts.

**AS AND FOR A FIFTH CAUSE OF ACTION
FOR NEGLIGENT HIRING, TRAINING AND RETENTION**

46. Plaintiff repeats and realleges Paragraphs "1" through "45" as if fully set forth.

47. Defendants NYC and NYPD, were responsible for hiring and training police

officers, including Defendants SUAREZ and FREY herein, who were competent and capable of properly carrying out their job without causing injury to persons, including Plaintiff herein.

48. Defendants NYC and NYPD, were negligent, reckless and careless in the hiring, training and retention of defendant SUAREZ and FREY.

49. Defendants NYC and NYPD, negligently failed to investigate and determine whether defendants SUAREZ and FREY were capable and competent to properly carry out their jobs without causing injury to persons, including the Plaintiff herein.

50. Upon information and belief, prior to the incident at issue in this action, Defendants SUAREZ and FREY had exhibited behavior indicating that they were unable to perform their duties as a police officer in a capable and competent manner.

51. As a result of the negligence of NYC and NYPD, in the hiring, training and retention of defendant SUAREZ and FREY, Plaintiff was caused to sustain serious personal injury, emotional anguish and deprivation of his civil rights and has been damaged in an amount that exceeds the jurisdictional limitations of all lower Courts.

**AS AND FOR A SIXTH CAUSE OF ACTION
FOR VIOLATION OF CIVIL RIGHTS**

52. Plaintiff repeats and realleges Paragraphs "1" through "51" as if fully set forth.

53. On and prior to November 8, 2012, defendants NYC and NYPD, permitted and tolerated a pattern and practice of unjustified, unreasonable and illegal use of unreasonable and excessive force against members of the public by officers of the NYPD.

54. Although such conduct was improper, the officers involved were not disciplined, retrained or prosecuted.

55. As a result, police officers of the NYPD were caused and encouraged to believe that

the use of excessive force upon members of the public would be permitted and tolerated by NYC and NYPD.

56. In addition to permitting a pattern and practice of improper and excessive use of force against members of the public, Defendants NYC and NYPD have failed to maintain a proper system for the investigation of all allegations and incidents of such excessive force.

57. Upon information and belief, systemic flaws included, but are not limited to, failing to credit testimony of non-police officer witnesses and uncritically relying on reports prepared by police officers involved in the incident.

58. Additionally, Defendants NYC and NYPD, permitted and tolerated a practice of allowing its officers to cover up their use of excessive force by filing false charges for among other things: "Assault in the Second Degree" and "Interfering with Governmental Administration in the Second Degree" and "Resisting Arrest".

59. The foregoing acts, omissions, systemic flaws, policies and customs of Defendants NYC and NYPD, caused their police officers to believe that the use of excessive force would not be aggressively, honestly and properly investigated, with the foreseeable result that police officers would be more likely to engage in such behavior.

60. As a direct and proximate result of the aforesaid acts, omissions, systemic flaws, policies and customs of defendants NYC and NYPD, Defendants NYC, NYPD, SUAREZ and FREY violated Plaintiff's civil rights.

61. As a result of the above, Plaintiff was caused to suffer serious personal injuries all to his damage in an amount that exceeds the jurisdictional limitations of all lower Courts, plus his attorney's fees.

**AS AND FOR A SEVENTH CAUSE OF ACTION
FOR VIOLATION OF THE 4TH AMENDMENT**

62. Plaintiff repeats and realleges Paragraphs "1" through "61" as if fully set forth.

63. On November 8, 2012, Plaintiff was placed under arrest.

64. On November 8, 2012 Plaintiff was arrested, assaulted, and falsely accused of assaulting defendant SUAREZ after Defendant SUAREZ assaulted, battered and used excessive force on and against the Plaintiff.

65. The actions of defendant SUAREZ were responsible for the conditions of Plaintiff's confinement and defendant SUAREZ's deliberate acts relative thereto constituted a deprivation of liberty without due process.

66. The foregoing deliberate acts of Defendant SUAREZ constituted a deprivation of liberty without due process and violated the plaintiff's 4th Amendment rights.

67. As a result of the aforesaid deprivation of liberty without due process, Plaintiff sustained serious personal injuries along with humiliation, shame, indignity, damage to reputation and credit and suffered emotional and physical distress and injury, all to his damage in a sum that exceeds the jurisdictional limitations of all lower Courts.

WHEREFORE, Plaintiff demands judgment against the defendants, who are jointly and severally liable, on each of the FIRST through SEVENTH causes of action, punitive damages in an amount to be determined upon the trial, by jury, of this action, reasonable attorneys fees pursuant to 42 U.S.C. § 1988(b), the costs and disbursements of this action and such other and further relief as this Court deems to be just and proper.

Dated: New York, New York
December 17, 2013

Joseph T. Mullen, Jr. & Associates

By: 

Neil A. Zirlin.

Attorneys for Plaintiff

30 Vesey Street – 15th Floor

New York, New York 10007

212.766.1177

STATE OF NEW YORK
COUNTY OF NEW YORK

SS:

The undersigned, an attorney admitted to practice in the Courts of New York State, states, that affirmant is associated with Joseph T. Mullen, Jr. & Associates, the attorney for the plaintiff, that affirmant has read the foregoing Summons and Complaint and knows the contents thereof, and that the same is true to affirmant's knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters affirmant believes it to be true.

That the reason why this verification is made by affirmant and not by the plaintiff is because the plaintiff is not within New York County where the attorneys maintain their offices; and that the source of affirmant's knowledge, and the grounds of belief as to those matters therein stated to be alleged on information and belief are correspondence and investigations which have been made concerning the subject matter of this action, and which are in the possession of the said attorneys.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York
December 17, 2013



Neil A. Zirlin

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COUNTY OF NEW YORK

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Plaintiff,

- against -

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT,
POLICE OFFICER JACOB SUAREZ – Badge No. 24230 and POLICE OFFICER
DAMIEON FREY-Badge No. 9509,

Defendants.

SUMMONS and VERIFIED COMPLAINT

JOSEPH T. MULLEN, JR. & ASSOCIATES

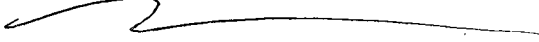
Attorneys for Plaintiff
30 Vesey Street, 15th Floor
New York, New York 10007
212.766.1177

To:
Attorney(s) for

CERTIFICATION PURSUANT TO 22 N.Y.C.R.R. §130-1.1a

I hereby certify that pursuant to 22 N.Y.C.R.R. §130-1.1a, the foregoing Verified Bill of Particulars and Various Discovery Responses and Requests are not frivolous or being frivolously presented.

Dated: December 17, 2013



Neil A. Zirlin
